IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/04/2003

Coram

The Honourable Mr.Justice M. KARPAGAVINAYAGAM
and
The Honourable Mr.Justice AR. RAMALINGAM

CRIMINAL APPEAL No.589 of 2000

1. Mani

2. Moyyasamy ..Appellants

-Vs-

State rep. by
Inspector of Police,
Yercaud Police Station.
(Crime No.1031/98) ..Respondent

Criminal Appeal against the judgment dated 23.6.2000 made in
S.C.No.141 of 1998 on the file of the III Additional Sessions Judge, Salem.

!For Appellants : Mr. K.V. Sridharan

^For Respondent : Mr. E. Raja,
Addl.Public Prosecutor.

:J U D G M E N T

(The Judgment of the Court was delivered by M.KARPAGAVOMAYAGAM, J.)

Mani (A1) and Moyyasamy (A2) were convicted for the offences under Sections 302 read with 34 and 201 I.P.C. Challenging the same, this appeal has been filed.

2. The facts leading to the conviction are as follows:
"(a) P.W.1 Arunachalam and A2 Moyyasamy are brothers. The deceased Sivakumar and P.W.2 Amulnathan are the sons of P.W.1 Arunachalam. After partition, both P.W.1 and the second accused were enjoying the landed

properties measuring 5 acres each.

(b) On 19.9.1996, the cattle belonged to P.W.1 grazed in the field belonged to the second accused. On account of this, there was a quarrel. The second accused got angry against his brother P.W.1 and stabbed on his neck with a knife. Therefore, P.W.1 accompanied by his son Sivakumar went to the police station and gave a complaint against A2 Moyyasamy and the same was registered. The said criminal case was pending.

(c) The occurrence had taken place on 24.11.1996. On that day at about 6.00 p.m., P.W.1 Arunachalam and the deceased Sivakumar were chatting with the family members. At that point of time, A1 Mani came there. The deceased gave coffee to him. They were conversing with each other for some time. Then, A1 Mani took the deceased Sivakumar to his house which is situated in the same village. The deceased did not turn up till 10.00 p.m. Therefore, in search of the deceased, P.W.1 went to the house of A1 Mani. He found that blood was oozing from the house through the water passage underneath the door frame. The house was found locked. Therefore, he came back home without knowing what to do. At that time, he was informed by P.W.2, his another son, that the deceased Sivakumar was found in the company of A1 Mani and A2 Moyyasamy at about 7.00 p.m. in the house o f A1. P.W.1 suspected that something had happened in the house of the first accused. He was not able to get peaceful sleep in that night.

(d) Next day morning at 6 O' clock, P.W.1 went to the house of the first accused and found the trail of blood stains near the house of the first accused. Finally, he found out the body of the deceased which was lying down in the field belonged to P.W.5 Chinnammal with multiple injuries. Then, P.W.1 rushed to Yercaud Police Station and gave a complaint Ex.P1 to P.W.13, the Head Constable. The case was registered under Section 302 I.P.C. In the complaint, he mentioned about his suspicion that the deceased must have been done away with A1 and A2.

(e) P.W.14, the Inspector of Police, on receipt of the message, took up investigation. On 25.11.1996, he went to the scene of occurrence and prepared observation mahazar Ex.P2 in front of the house of the first accused. He also prepared another observation mahazar Ex.P3 in the place where the dead body was found. The rough sketch is Ex.P23 . The inquest was conducted between 1.30 p.m. and 4.30 p.m. Ex.P24 is the inquest report. Then, the dead body was sent for post-mortem.

(f) Since the house of the first accused was found locked, the lock was broke open and the house was searched. Then, P.W.14 recovered blood stained cement flooring, some human hair and blood stained brass lock from the house of the first accused in the presence of witnesses.

(g) On 26.11.1996 at 10.45 a.m., P.W.7 Doctor conducted post-mortem and noticed that the deceased sustained six injuries on various parts of the body including the neck. He issued Ex.P10 post-mortem certificate giving opinion that the deceased would appear to have died of injuries to vital organs and haemorrhage.

(h) Then, P.W.14, the Inspector of Police arranged to send the material objects for chemical analysis. Next day, P.W.15, regular Inspector of Police took up further investigation. He came to know that A1 surrendered before the court. Therefore, he filed an application on 2 8.11.1996 for police custody. Ultimately, he obtained police custody of A1 on 6.12.1996 and on his confession, he recovered the blood stained clothes of A1 (M.Os.15 to 17) and blood stained koduval sticking with human hair (M.O.18) from the place as pointed out by A1.

(i) On 8.12.1996, P.W.15 arrested A2 and on his confession, his blood stained clothes (M.Os.8 and 9) were recovered. Then, he continued the investigation and examined all the other witnesses. On completion of the investigation, the filed the charge sheet against both the accused for the offences under Sections 302 read with 34 and 201 I.P. C.

(j) During the course of trial, the prosecution examined 15 witness, filed 27 exhibits and marked 18 material objects.

(k) During the questioning under Section 313 Cr.P.C., both the accused had simply denied their complicity in the crime in question. On the side of the defence, D.W.1 was examined.

(l) On analysis of the evidence available on record, the trial Court concluded that the prosecution has established its case beyond reasonable doubt and found both the accused guilty of the offences under Sections 302 read with 34 and 201 I.P.C. Hence, this appeal."

3. Mr.Sridharan, the learned counsel for the appellants would take us through the entire evidence and contend that the materials available on record would not be sufficient to hold that the appellants are the culprits. The submissions made by the counsel for the appellants, in short, are as follows: "There is no motive against A2, particularly when the earlier occurrence in which the second accused attacked P.W.1 was taken place as early as on 19.9.1996 and in respect of the said occurrence, a case was registered against the second accused. There is no immediate motive for the second accused to commit the murder of the deceased. No material has been placed by the prosecution to prove that A1 is a close associate of A2 at whose instance, this murder has been committed. As a matter of fact, there is no motive for A1 to commit the murder of the deceased. Even though P.W.1 saw the blood oozing from the house of the first accused, P.W.1 did not choose to go to police station to give a complaint. This conduct is quite artificial. Though the evidence of P.Ws.6 and P.W.14 would show that some properties had been recovered from the house of the first accused, admittedly, those things have not been sealed while they were sent to the court. On the confession of A1, it is stated, the koduval and clothes of the first accused have been recovered. Admittedly, the same were recovered only from the place which is very near to the scene of occurrence and as such, the recovery cannot be believed. P.W.1 would admit that he has given a complaint against A1 only, but Ex.P1 would contain the names of both the accused and as such, the complaint given by P.W.1 has been suppressed. There is no material to show that the house from which the blood stained earth was recovered was occupied

by A1. The investigating officer before opening the locked house, must have obtained warrant from the court concerned and the failure to comply with the procedure would affect the validity of the evidence relating to the recovery. At any rate, the only evidence against A2, namely, recovery of the blood stained clothes cannot be relied upon, inasmuch as P.W.1 himself would admit that the second accused was arrested within three days after the occurrence. It is the case of prosecution that he was arrested only on 8.12.1996 and on his confession, blood stained clothes (M.Os.8 an 9) were recovered. Therefore, the conviction imposed upon the appellants is illegal and the same is liable to be set aside."
4. He would also cite the authorities in VITHAL TUKARAM MORE v. STATE OF MAHARASHTRA (2002 S.C.C (Cri) 1555), BALU SONBA SHINDE v. STATE OF MAHARASHTRA (2003 S.C.C.(Cri) 112), STATE OF U.P. v. BABU RAM (2000 S.C.C. (Cri) 845) and NARAYANA v. STATE (1999 CRI.L.J.4994 ) with regard to various aspects submitted by him as mentioned above.

5. In reply to the said submissions, Mr.E.Raja, the learned Additional Public Prosecutor, while justifying the reasonings given by the trial Court in convicting both the appellants/accused, would contend that the materials collected by the investigating agency would clinchingly connect both the accused with the crime in question. He would also cite the decisions in SAHADEVAN v. STATE (2003 S.C.C.(Cri) 382), JOSEPH v. STATE OF KERALA (2000(2) L.W. (Crl) 783) and MEHARBAN v. STATE OF M.P. (1997 S.C.C.(Cri) 118).

6. We have carefully considered the rival contentions urged by the counsel for the parties and also gone through the records.

7. Admittedly, there is no direct evidence. The entire case rests upon the circumstantial evidence. It is settled law that in the case of circumstantial evidence, every circumstance must be clearly established by the prosecution and those circumstances must form a complete chain without any missing link and the same should unerringly point to the guilt of the accused without giving any room for hypothesis or innocence of the accused.

8. In the light of the above principles laid down by this Court as well as the Supreme Court, we have to analyse the materials available on record.

9. The motive projected by the prosecution is that A2 was aggrieved over the police complaint given by P.W.1 against him on the accusation that he was stabbed by him with a knife. It is also pointed out that only with the help of the deceased Sivakumar, P.W.1 was able to go to police station and give a complaint against A2. the said complaint was given on 19.9.1996.

10. The prosecution has not placed any material to show that subsequent to 19.9.1996, any incident happened for giving rise to cause of action to have the motive to murder the deceased. Admittedly, the occurrence took place on 24.11.1996. As such, the motive as against A2 cannot be said to be established.

11. Similarly, there is no evidence let in by the prosecution to show that A1 and A2 are close associates and only on the above said motive, A2 has set up A1 to commit the murder of the deceased. Under those circumstances, the main link, namely, motive as against A2 is missing.

12. The only remaining evidence against A2 is the recovery of the bloodstained clothes from A2 on 8.12.1996. As noted above, the occurrence took place on 24.11.1996 and the second accused was arrested on 8.12.1996 and on his confession, M.Os.8 and 9, bloodstained clothes were recovered. We are unable to place any reliance with reference to the recovery for the reason that P.W.1 himself would admit in the cross-examination that A2 was arrested by the police within three days after the date of occurrence and he was detained for about five days in the police station itself and he was interrogated in the presence of P.W.1. If this evidence adduced by P.W.1 is taken into account, then the evidence relating to the arrest of A2 on 8.12.1996 and consequent recovery cannot be believed. In such circumstances, we are unable to come to the conclusion that A2 played any role in the murder of the deceased which took place in the house of A1.

13. Let us now come to the involvement of A1 in the crime in question. According to P.W.1 both in Ex.P1 and in his evidence, on 24.11.19 96 at about 6.00 p.m., A1 came to their house and took the deceased within a few minutes to his house. P.W.1 in his deposition would give further details stating that the first accused came to the house and spent some time with the deceased inside the house and the deceased provided coffee to him. Thereafter, he was conversing with the deceased for some minutes. Then, A1 took the deceased to his house. On noticing that the deceased did not turn up till 10.00 p.m., P.W.1 in search of the deceased went to the house of the first accused. To his shock, the door was found locked and blood was oozing from the house through the water passage underneath the door frame. Since it was night time, he was not able to take any decision. So, he waited till the morning.

14. The next day morning at 6 O' clock, he again went to the house of the first accused and saw that the place around the house was found with trail of blood. When he went behind the house, he found the dead body of the deceased with multiple injuries on the body in the field of P.W.5 Chinnammal. He suspected involvement of A1 and A2 mainly on the reason that P.W.2 informed him that all the three, namely the deceased, A1 Mani and A2 Moyyasamy were last seen in the house of A1 . Thus, it is clear that P.W.1 had suspicion mainly against A1 since the bloodstains were found near the house of A1 and the dead body was found lying down in the field of P.W.5 which is very near to the house of A1.

15. On the basis of the complaint given by P.W.1, a case was registered. P.W.14, the Inspector of Police came and found inside the house after breaking open the door, bloodstains in the floor and also found trail of blood from the house of the first accused to the place where the dead body was found. On that basis, P.W.14 continued the investigation. In the meantime, A1 himself surrendered before the court on 28.11.1996. As noted above, P.W.15, the regular Inspector of Police obtained police custody and on his

confession, the bloodstained clothes of the first accused (M.Os.15 to 17) and also koduval (M.O.18) were recovered.

16. The very important incriminating circumstance is that the koduval (M.O.18) was found with sticking hair. On comparison, it was found that scalp hair of the deceased was found similar to the hair sticking to the koduval M.O.18. Besides that, M.Os.15,16 and 17, the clothes of the first accused

stained with blood. The Serologist's report would reveal that the blood group of the deceased was found tallied with the blood group found on the clothes M.Os.15 to 17.

17. When the prosecution established that A1 took the deceased at 6.00 p.m. on 24.11.1996 to his house where the deceased was done away with, the burden shifts on the first accused to show how the deceased died in his house. It is the case of the first accused that the house did not belong to him and it belonged to his father. But, the fact remains that even according to the written statement by the first accused, while he was questioned under Section 313 Cr.P.C., the house was vacant and nobody occupied it. Strangely, he stated in the statement that the said house was occupied for illegal purposes by some other persons. When P.W.1's evidence relating to the fact that the deceased was taken by A1 and the house in which the deceased was done to death belonged to A1, it is for A1 to show as to what happened to the deceased, whom he took at 6.00 p.m. on 24.11.1996. As per the opinion of P.W.7, the Doctor in the post-mortem certificate, the deceased would have died within 36 to 40 hours which would show that the occurrence must have taken place between 7.00 p.m. and 11.00 p.m. on 24.11.1996.

18. When there are formidable materials to show that A1 alone took the deceased to his house and the house belonged to A1's family and the bloodstained clothes and koduval were recovered from him, the first accused has to explain as to what happened to the deceased. Unfortunately, there is no explanation whatsoever. Strangely, the first accused filed a certificate to the effect that his blood group is 'B' which is the group of the deceased. But, it would amount to saying that at the time of occurrence, A1 wore the clothes M.Os.15 to 17 recovered from him. These circumstances, in our view, would be sufficient to hold that A1 alone is the culprit who committed the murder of the deceased.

19. It may be true that no material has been placed by the prosecution to prove the motive for A1 to commit the murder of the deceased. But, in this context, the observation made by the Supreme Court in STATE OF U.P. v. BABU RAM (2000 S.C.C.(Cri) 845) is quite relevant, which is as follows:

"The question in this regard is whether the prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for such motive could then be counted as one of the circumstances. However, it cannot

be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the investigating officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law."
So, in view of the above observation, we are to conclude that merely because no material was placed by the prosecution with reference to the motive for the first accused to murder the deceased, we cannot conclude that the other evidence, which is available on record and which forms the complete chain, cannot be accepted.

20. In view of the above discussion, we are constrained to hold that A1 and A1 alone had committed the crime of murder of the deceased inside his house and after committing the murder in order to cause disappearance of the evidence, he locked the door and then removed the dead body and put in the field of P.W.5 Chinnammal at a distance of one furlong away from his house.

21. Therefore, the first accused is liable to be convicted under Sections 302 and 201 I.P.C. and accordingly convicted and sentenced to undergo life imprisonment with fine of Rs.2,000/- for the offence under Section 302 I.P.C. and in respect of the offence under Section 201 I.P.C., the sentence imposed by the trial Court is confirmed. The sentences to run concurrently. Hence, the appeal as regards the first appellant (A1) is dismissed.
The conviction and sentence imposed upon the second accused are set aside and consequently, the appeal in respect of the second appellant (A)2 is allowed. Fine, if paid, shall be refunded to A2.

Index : Yes
Web Site: Yes

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To

1) The III Additional Sessions Judge, Salem.
2) -do- the Principal Sessions Judge, Salem.
3) The Superintendent, Central Prison, Salem.
4) The Superintendent, Central Prison, Coimbatore.
5) The Public Prosecutor, High Court, Madras.
6) The District Collector, Salem.
7) The Director General of Police, Chennai.

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